

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

| | | |
|--------------------------------|---|------------------|
| MARK KUPSTIS, |) | |
| Institutional ID No. 707122, |) | |
| SID No. 4412810, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| V. |) | CIVIL ACTION NO. |
| |) | 1:10-CV-157-C |
| DONALD DAVIS, |) | ECF |
| Field Officer, <i>et al.</i> , |) | |
| |) | |
| Defendant(s). |) | |

ORDER

The United States Magistrate Judge entered a Report and Recommendation on December 28, 2010, and Plaintiff filed his objections on January 10, 2011.¹

The undersigned United States District Judge has made an independent examination of the record in this case and has examined the findings, conclusions, and recommendations of the Magistrate Judge as well as the specific objections of the Plaintiff. The Court finds that Plaintiff's objections should be overruled in all things, and the Court accepts and adopts the findings, conclusions, and recommendation of the Magistrate Judge.

It is, therefore, ORDERED that Plaintiff's complaint and all claims alleged therein are **DISMISSED WITH PREJUDICE AS FRIVOLOUS and for failure to state a claim.**

Judgment shall be entered accordingly.

¹Although the objections were not received and docketed by the Clerk until March 15, 2011, Plaintiff signed and dated his objections on January 10, 2011, and it is clear from the envelope containing said objections that they were mailed to the Clerk on January 12, 2011.

This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915(g) and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

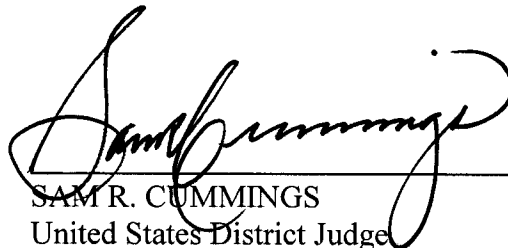
Dismissal of this action does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See Williams v. Roberts*, 116 F.3d 1126, 1128 (5th Cir. 1997).

A copy of this order shall be sent by first class mail to all parties appearing *pro se* and to any attorney of record by first class mail or electronic notification.

Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$455.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Any pending motions are **DENIED**.

Dated July 26, 2011.



SAM R. CUMMINGS
United States District Judge